In forma pauperis
Petition not printed

In the Supreme Court of the United States

OCTOBER TERM, 1944.

No. 785.

RALPH ARONSON and HYMAN BRECKER,
Petitioners,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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CASES CITED

STATUTES CITED

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Brief in Opposition to Petition for Writ of Certiorari.

Statement.

The petitioners seek a review of the judgments of the County Court of Kings County, which convicted them of the Crime of Robbery in the First Degree.[1] On appeal to the Appellate Division of the Supreme Court, Second Judicial Department, the judgment of conviction was unanimously affirmed. No opinion was written (268 App.

[1] Petitioner Aronson was sentenced to a term of imprisonment of from 30 to 60 years and petitioner Brecker to a term of imprisonment of from 40 to 60 years. Separate judgments were entered by reason of the fact that after the trial, and before sentence and judgment, petitioner Aronson escaped from the jail in which he was then confined and was not recaptured until after sentence and judgment had been imposed upon petitioner Brecker.

Div. 791). Petitioner Aronson made application to the Chief Judge of the Court of Appeals, the highest court of the State, for leave to appeal thereto from the judgment of the Appellate Division of the Supreme Court. The application was denied.[2]

Question Presented.

Petitioners contend "that it was in error to present as evidence an alleged confession against each petitioner, which were obtained by intimidation, coercion, deprivation and encroachment, in disregard of their inalienable rights guaranteed by the Fourteenth Amendment of the Constitution of the United States".

Record Facts Material to the Question Presented.

Outline of the Case.[3]

Mr. and Mrs. Louis Yagoda, residents of Brooklyn, had spent the afternoon of October 29, 1941, in the Borough of Manhattan and in the evening of that day they entered a Brooklyn-bound subway train which brought them to their home about 10 o'clock. Mr. Yagoda was wearing a diamond and sapphire ring on his right hand. In the vestibule of the apartment house in which they lived, they were accosted by two men. One was armed with a revolver with which he forced Mr. Yagoda to throw up his hands

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[2] One appeal is allowed as a matter of right. A further appeal may be had only if a Judge of the Court of Appeals or a Justice of the Appellate Division certifies that a question of law is involved which ought to be reviewed by the Court of Appeals (Code of Criminal Procedure, § 520).

[3] By order of the Appellate Division of the Supreme Court, petitioners were permitted to prosecute the appeal in that court on the original typewritten minutes of the trial. References herein contained are to the pages of such record.

and surrender the ring and a small sum of money (8). On an evening in March of 1942, Mr. Yagoda was called to a police station in Brooklyn and there, in the presence of several detectives (11), saw the petitioners. Without a preliminary conversation between Mr. Yagoda and the detectives (12), a conversation between the petitioners and Yagoda ensued in which petitioner Aronson described to him the details of the holdup of the previous October evening (15). Petitioner Brecker participated in the conversation at least to the extent of denying that the revolver used in the holdup was loaded (16, 20). Yagoda made no identification of either of the petitioners as the robbers beyond saying that there was a resemblance (22). He did, however, testify that on the occasion of this meeting in the police station, neither of the petitioners presented an unusual appearance (30) and that they both looked as normal then as they did on the day of trial (31).

Mrs. Yagoda's testimony was substantially like that of her husband as to the manner of the holdup. She did not go to the police station.

Detective William Shea testified that he arrested the petitioner Aronson on March 16, 1942 (37), and brought him to the police station where he turned the prisoner over to Lieutenant Meenahan, the commanding officer. On instruction of the Lieutenant, he then went to Manhattan where he waited in front of the petitioner Brecker's home until 2:30 o'clock on the morning of March 17, when the petitioner came to his home (39). A search of the premises disclosed in a bureau drawer a revolver, unloaded, but accompanied by a box of .38 calibre cartridges (47). (To the insinuation that the revolver had been "planted" by police, it was testified that this was a unique type of revolver and certainly not one customarily used by New York City police officers [179].) The ownership of the revolver was admitted by petitioner Brecker (42) who also admitted that the weapon was the one which had been used in the Yagoda holdup. He described the details of the crime, the sale of the loot, and the equal distribution

of the proceeds between himself and the petitioner Aronson (46). Petitioner Aronson, in the presence of Brecker, gave a similar description to the detective. Then Detective Shea took the prisoners to the Yagoda premises where they re-enacted the holdup (51). The petitioners were then taken to the subway station from which they and the Yagodas had alighted just before the holdup (52).

The questioning of the petitioners in the police station continued from about noon of March 17 until about 5 o'clock that afternoon. It was not a continuous interrogation. The prisoners were given an opportunity to eat (63) and their questioning was constantly interrupted by other matters which transpired in the police station. Petitioner Aronson was moved to make his confession by the fact that Brecker had already confessed (64). To the charge on cross examination that the confessions had been induced by violence, the detective made an emphatic denial (66) and in fact made the point that Brecker's confession as to the robbery was volunteered within about half-an-hour after the questioning began (77).

Lieutenant Meenahan testified that he had spoken to petitioner Aronson when he was brought into the police station and that about an hour later Aronson confessed the robbery to him and implicated Brecker (83). This caused the Lieutenant to send Detective Shea and others to Brecker's house. Lieutenant Meenahan also denied the insinuation of force and violence upon the body of Aronson (89). He was not present when Brecker was being questioned (93).

Detective McGowan, who had accompanied Detective Shea when Aronson was arrested (94) and also had gone with him to Brecker's house in Manhattan (96), corroborated Shea's testimony as to the discovery of the revolver and the cartridges and as to the confessions by both petitioners. This witness likewise denied that brutality or force of any kind had been inflicted upon petitioner Aronson (112, 113) or petitioner Brecker (120).

Michael Sadin, a stenographer in the office of the District Attorney of Kings County testified that, under the supervision of an investigator of that office, he took statements of both petitioners in the mid-afternoon of March 17, 1942 (134). The statements of both petitioners were read into evidence (Aronson's pgs. 136-143; Brecker's 143-147). They gave a complete and detailed description of the manner in which petitioners had seen the Yagodas on the subway, followed them to their home, held up and robbed Mr. Yagoda and disposed of the proceeds of the robbery. Brecker's confession also admitted the possession and ownership of the revolver and that it was the weapon used in the holdup (145). Sadin testified that the petitioners at the time of the questioning were both of normal appearance and that neither one of them had made any complaint of violence or intimidation (147-149). The statements themselves were then offered in evidence and received over the objection of petitioners' counsel, the court ruling that up to this point there had been no evidence whatever of force or fear or intimidation (151-152). The court did, however, rule at this time that the question of the credibility of the witness with respect to the statements and all other evidence was for the jury (153).

Detective Walter Shea, who had been with Detective William Shea at the time of the arrest of Aronson and with Detective William Shea and Detective McGowan at Brecker's home, and with both these men and Lieutenant Meenahan in the police station, corroborated the testimony of his fellow officers (153-176) and specifically denied that any violence had been used upon either petitioner (161, 175).

Defense.

Petitioner Aronson was a witness in his own behalf. He admitted former convictions of the crimes of Petit Larceny and Arson in the Third Degree. He denied any participation in the crime under scrutiny and testified

that he had been physically misused by Lieutenant Meenahan (189) and other police officers (190, 191). He attributed the greatest amount of force and violence to Detective Harrington (195). He testified with respect to the statement made to the District Attorney that his answers had been prompted by the detectives (197), even though the District Attorney was present at the time (207, 211). On cross examination, however, he admitted that he had made no complaint of this violence to the District Attorney or to the Magistrate (203, 204) before whom he was subsequently arraigned, or to the doctor in the Raymond Street Jail where he was sent to await trial. Although he had testified to continuous excruciating torture by a number of detectives, he did not ask for medical treatment in the jail (205).

Petitioner Brecker likewise testified in his own behalf. He admitted former convictions of the crimes of Robbery on two different occasions, one in Florida and one in New York. He denied that the revolver found in his bedroom was his own (217) and implied that it had been "planted" there by the detectives (219). He denied any previous acquaintance with petitioner Aronson (223) although they had both been in the same prison at Dannemora. He testified that when, in the police station, he had reiterated his denials of participation in the crime, he was beaten (235), kicked in the stomach (237), had his arm twisted (238), his backbone bent, and had been struck across the shoulders, legs and body with a rubber hose (239). He finally made the admissions to the District Attorney's investigator and a stenographer only because of this experience, and on the prompting of the detectives (245). He, too, admitted on cross examination, however, that he had not made any complaint to the committing magistrate (253) nor to the Warden of the Raymond Street Jail, nor did he ask for medical treatment in the jail (254). He also admitted that he had been interrogated afterwards by State Parole officers, with no detectives present, and that he did not make any complaint to these officers (257).

The Rebuttal.

William Murphy, District Attorney's investigator who conducted the stenographic examination of the petitioners, denied that their answers were given in response to promptings by the detectives (259). He stated that there had been no violence offered to these men, nor did they protest their innocence to him (260). Both of them, at the time of his investigation, presented usual, normal appearances.

Detectives McGowan, Walter Shea and Harrington all denied that the prisoners had been subjected to violence or that their answers to the questioning of the District Attorney's investigator had been prompted (264-274), as did Detective William Shea (295-298).

Abe Hutter and Walter Doud, State Parole Officers, both testified that they had interrogated the petitioners in the station house in the mid-afternoon of March 17 and had seen no marks of violence on them nor had complaints been made by the petitioners, although this was immediately after the confessions had been made by the petitioners to the District Attorney's investigator. Both of the prisoners admitted participation in the Yagoda robbery without any prompting from detectives (277-295).

Jurisdiction.

The order and judgment of the Appellate Division of the Supreme Court affirming the judgments of the County Court is dated June 19, 1944. The motion for leave to appeal to the Court of Appeals was denied on the 26th day of September, 1944. Petition for the writ of certiorari was filed on the 26th day of December, 1944. The jurisdiction of this court is invoked under section 237 (b) of the Judicial Code, as amended; 28 U. S. C. A., section 344 (b).

It is our purpose in this brief to prove that jurisdiction does not exist for the purposes contended by the petitioners

because (1) their confessions were lawfully obtained under both state and federal law and, (2) because with respect to the confessions, as with respect to all other matters of procedure, these questions were submitted to the jury under correct and proper instructions by the trial court with the result that there has been no denial of due process. In this connection, we point out that on the appeal to the Appellate Division of the Supreme Court, no question as to the voluntary character of the confessions was raised. The brief filed in the Appellate Division of the Supreme Court on behalf of the petitioners contains the following, which we quote verbatim in order to show to this court that such question of due process was not even raised and is now the result only of an afterthought on the part of the petitioners:

"*Summary of Argument*"

"The defendants contend that there should be a reversal of the judgments against them for the following reasons:

FIRST: The defendants were deprived of a fair and impartial trial by the biased and hostile attitude manifested by the Court throughout the entire trial.

SECOND: The trial Court erred in receiving in evidence a box containing twenty-seven .38 calibre cartridges alleged to have been found in the home of the defendant Brecker, not connected in any way with the crime charged.

THIRD: The Court's reference to the right of defendants to appeal if the Court made any errors constituted prejudicial error, since it contained the intimation that if the jury made a mistake the error might also be cured by an appeal.

FOURTH: The Court committed serious prejudicial error in permitting the prosecution to prove the defendants' previous bad character as part of its affirmative case."

Argument.

I.

The sole question raised by the petitioners herein is whether or not the confessions introduced against them in the trial court were voluntary and thus legally admissible, or whether or not these confessions were induced by such force and fear as to have resulted in a destruction of mental freedom. The guaranty of due process of law cannot be translated into the right to review decisions of state courts with respect to alleged erroneous findings of fact or alleged erroneous determination of law concerning matters tried in state courts. The claim of the denial of due process must always be tested within the limitation that "We must remember that the Fourteenth Amendment does not limit powers of the states to try and deal with crimes committed within their borders, and was not intended to bring to the test of a decision of this court every ruling made in the course of a state trial" (*Avery* v. *Alabama*, 308 U. S. 444, 446-447). The petitioners must make it clear in this attempt to set aside the result of a trial in the state court which has been held to be a legally fair and proper trial that "a federal right has been invaded" (*Lisenba* v. *California*, 314 U. S. 219, 239).

The principal reliance of the petitioners for this purpose is placed on the case of *Asheraft* v. *Tennessee* (322 U. S. 143), where this court on a writ of certiorari reversed the judgment of the Supreme Court of Tennessee which had affirmed a conviction of Murder in the First Degree. We believe it useful to analyze the *Asheraft* case; for such analysis will show clearly the complete differences between the facts of that case and of the instant case—differences which must induce a difference in decision.

The body of Asheraft's murdered wife was found on a country road, near her automobile. Ware, a negro youth, was indicted for her murder and Asheraft was also in-

dicted as an accessory before the fact, charged with having hired Ware to commit the murder. Both were convicted and their convictions were affirmed by the Supreme Court of Tennessee. Both are alleged to have confessed. On trial, Ashcraft denied making a confession and also testified to a brutal attempt on the part of police to induce such confession. On review, this court found the following facts with respect to Ashcraft: He was a citizen enjoying an excellent reputation, a skilled mechanic, and the owner of some property, including the home in which he lived with his wife. Their marital relations were pleasant and happy. Indeed, testimony of mutual friends who had been at their home the night before the murder, proved this point. Ashcraft identified his wife's body and had a conference with the police officers but was not taken into custody for a week. He was then brought to an office in the county jail which was equipped with the varied paraphernalia of crime detection, including high-powered lights. Ashcraft was placed at a table, with such a light over his head, and was then questioned from the early evening of Saturday, June 14, until 9:30 or 10 o'clock on the morning of Monday, June 16. During this whole period he never left the room. While his questioners came and went in relays for purposes of rest, he himself had no rest whatever *except for a single five-minute respite.* The court found these facts to be without dispute. As to further facts about to be given, there was dispute:

1. That Ashcraft was threatened and abused, his eyes blinded by the electric lights and his nerves frayed by the unbearable strain. Indeed, there was dispute as to the very existence of a confession, Ashcraft asserting that he never did admit knowledge concerning, or participation in, the crime and the state contending that he had confessed. This alleged confession was reduced to a typewritten transcript and it was testified on behalf of the state that Ashcraft admitted the truth of the statement but refused to

sign it. In the process of the "independent examination" of the case (*Lisenba v. California, supra*), this court said at page 152:

> "In reaching our conclusion as to the validity of Ashcraft's confession we do not resolve any of the disputed questions of fact relating to the details of what transpired within the confession chamber of the jail or whether Ashcraft actually did confess. * * * Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled. *We reach this conclusion from facts which are not in dispute at all.* Ashcraft, a citizen of excellent reputation, was taken into custody by police officers. Ten days' examination of the Ashcraft's maid, and of several others, in jail where they were held, had revealed nothing whatever against Ashcraft. Inquiries among his neighbors and business associates likewise had failed to unearth one single tangible clue pointing to his guilt. For thirty-six hours after Ashcraft's seizure during which period he was held incommunicado, without sleep or rest, relays of officers, experienced investigators, and highly trained lawyers questioned him without respite. From the beginning of the questioning at 7 o'clock on Saturday evening until 6 o'clock on Monday morning Ashcraft denied that he had anything to do with the murder of his wife." (Italics ours.)

The factual differences between the two cases could hardly be more pronounced. On the one hand, we have Ashcraft whose status has been described in the opinion of this court: A citizen of excellent reputation, happily married to the very woman whose death he was accused of instigating. On the other, we have these petitioners, both felons, both men of violence, both without marital ties which might act as a deterrent to further crime. In the one instance there is the case of a person without previous experience with the processes of the law. In the other, we are dealing with two men well versed in the devious trick-

eries of the underworld and with long opportunities (in prison) for reflection on the methods of prevarication which they might find it useful to employ on later experiences. In the one case, the record itself substantiates a claim of torture over a period of thirty-six hours. In the other, the petitioners here themselves claim no more than a questioning over a period of a few hours accompanied by violence. This charge of alleged torture is denied by all the police officers involved. On the mere ground of credibility, the trial jury had the right to spurn the testimony of the petitioners and to believe the evidence given by the police officers. More than that, the inherent circumstances of the situation repudiated the petitioners' version of the events in the police station. They made no complaint of brutality to the district attorney's representative. They brought no charges of violence before the committing magistrate, who surely cannot be assumed even by them to have been a party to the alleged conspiracy against them. They did not utter a syllable of protest to the parole officers who interrogated them during the mid-afternoon of the very day on which they had made the confession and only shortly before this examination by the parole officers. They asked for no medical treatment in the Raymond Street Jail and did not utter a word of complaint to the doctor who examined them. They thereby are brought squarely within the spirit of the opinion written by the Chief Judge of the New York Court of Appeals in *People* v. *Mummiani* (258 N. Y. 391, 397), in which it is said:

> "A narrative so circumstantial cannot easily be reconciled with the defendant's present story that it was an utter fabrication. A multitude of extrinsic circumstances not sufficient of themselves to establish the defendant's guilt bring the confessions into accord with probability."

There is yet another difference—in this instance one of law rather than of fact—between the case at bar and

the *Ashcraft* case. On the trial of Ashcraft, the court charged the jury with respect to his alleged confession, as follows:

> "I further charge you that if verbal or written statements made by the defendants freely and voluntarily and without fear of punishment or hope of reward, have been proven to you in this case, you may take them into consideration with all of the other facts and circumstances in the case. * * * In statements made at the time of the arrest, you may take into consideration the condition of the minds of the prisoners owing to their arrest and whether they were influenced by motives of hope or fear, to make the statements. Such a statement is competent evidence against the defendant who makes it and is not competent evidence against the other defendant. * * * You cannot consider it for any purpose against the other defendant."

On review, this court expressed dissatisfaction with the sufficiency of such a charge. We respectfully submit that there can be no dissatisfaction concerning the charge of the trial court to the jury when these petitioners were on trial. It reads, concerning the confessions, as follows:

> "The confessions, so-called, were then read to the jury.
>
> What is the law that governs the subject of confessions?
>
> 'A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against them, unless made under the influence of fear produced by threats or unless made upon a stipulation of the District Attorney that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction without additional proof that the crime charged has been committed.'
>
> Let me make this plain. The first question the jury must decide is this: Did the defendant make a confession? Of course, if he made no confession then

all of this discussion is academic, it is meaningless. If you shall have come to the conclusion that he did make a confession, then you must determine from all of the evidence in the case on both sides whether the confession was made under the influence of fear produced by threats or was made upon a stipulation of the District Attorney that he was not to be prosecuted therefor. In other words, did they extort a confession out of them by violence or threats or conduct which induced fear? If the confession was obtained in that fashion, or even if you have a reasonable doubt about it, then the confession is not worth the paper it is written on. That is plain English, isn't it? There is no claim here that the District Attorney made any promises to these defendants or either of them that he would not prosecute them if they made confessions; but even in that type of case a confession cannot be used in evidence against a defendant. The sole claim here is this: 'Yes; we made these confessions, but these confessions were beaten out of us, they were extorted from us, they were the result of duress, they were the result of violence or force or fear and torture. They were not voluntary confessions.' That is the claim of each of these defendants.

It is unnecessary to go into the details of the alleged beatings. Summarizing them briefly, the defendants, I believe, each of them, claim that they were 'kneed in the stomach,' as they call it; that they were throttled in the crook of the arm of the detectives; that they were punched in the chin with the heel of a hand; that they were thrown to the floor on many occasions. One defendant claims he was belabored with a rubber hose on his shoulders and across his back and on his limbs. Both of them claim they were beaten unmercifully. Did that happen? Did any portion of it happen? Was any force used upon them to induce them to make the confession? The law says that if force was used upon them in any manner at all, threats or otherwise, the confession is worthless as evidence. Of course, whether force was used or threats were used to induce the making of these

confessions is a matter that you must decide for yourselves. The Court is presenting the contentions of both parties and nothing more.

There is a third question that you must decide, if you shall have decided first that they made the confessions and that they were voluntary, and that is: are these confessions true? Did what they say happened actually transpire? There has been some talk here about the date. The crime is alleged to have occurred in October of 1941, and in the alleged confession the month of September, 1941, is mentioned. It is for you to determine whether that is an important contradiction or whether that is merely an error, an unfortunate mistake."

Vide: People v. *Doran* (246 N. Y. 409).

This part of the charge follows, and was followed by, other portions in which the trial court correctly instructed the jury as to the burden of proof, the meaning of reasonable doubt, and all other matters involving the constitutional or statutory rights of these defendants to a fair trial.

We respectfully submit that the analysis of the facts which we have given compels the conclusion that there is no similarity between the instant case and the *Ashcraft* case and that the decision herein should be based not on the *Ashcraft* decision but on the opinion and decision of this court in *Lyons* v. *State of Oklahoma* (322 U. S. 596). We believe that the rules laid down in that case have been completely and properly observed in the trial of these petitioners. Thus, the instructions to the jury were sufficient. Again, the confessions of the petitioners were voluntary as a matter of fact and record and, further, within the test laid down by this court in the *Lyons* case. That test was stated as follows:

"When conceded facts exist which are irreconcilable with such mental freedom, regardless of the con-

trary conclusions of the triers of fact, whether judge or jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands. But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and the jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. *Lisenba v. California*, *supra*, 314 U. S. page 238, 62 S. Ct. page 290, 86 L. Ed. 166."

In Conclusion.

We respectfully submit:

1. That these petitioners freely and voluntarily made the confessions introduced against them and that no violence was used upon either of them to coerce the confession.

2. That the issue as to these confessions was submitted to the jury under the proper legal instructions.

II.

The petition should be denied.

Respectfully submitted,

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Appendix.

Section 517, New York Code of Criminal Procedure.

"§ 517. *In what cases an appeal may be taken by defendant.*

An appeal to the supreme court may be taken by the defendant from the judgment on a conviction after indictment, except that when the judgment is of death, the appeal must be taken direct to the court of appeals. * * *."

Section 520, New York Code of Criminal Procedure.

"§ 520. *Appeal, a matter of right; one appeal; how taken.*

All appeals, provided for by this chapter may be taken as a matter of right. Every person convicted in a criminal action or proceeding shall have the right to have such judgment of conviction or order reviewed on appeal by an appellate tribunal as herein provided, but there shall be only one such appeal and the decision of the appellate court shall be final, and no appeal shall lie from that court to any other court except as hereinafter provided:

1. In the City of New York such appeals shall be taken as follows: * * * from a conviction by the court of general sessions of the County of New York or by a county court within said city * * * except where the penalty is death, to the Appellate Division of the Supreme Court * * *.

2. * * *

3. Where an appeal has been taken and has been decided by any of the appellate tribunals referred to, a further right of appeal to the court of appeals shall lie as hereinafter prescribed, but not otherwise. If a judge of the court of appeals or a justice of the Appellate Division of the Supreme Court * * * certifies that a question of law is involved which ought to be reviewed by the court of appeals, then a further appeal on such question of law may be taken to the court of appeals.

4. * * *."